TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible]

No. 208

THE GULF, COLORADO & SANTA FE RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

W. R. DENNIS.

IN ERROR TO THE COUNTY COURT OF MILAM COUNTY, STATE OF TEXAS.

FILED FEBRUARY 8, 1899.

(20,065.)

(22,005.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 429.

THE GULF, COLORADO & SANTA FE RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

W. R. DENNIS.

IN ERROR TO THE COUNTY COURT OF MILAM COUNTY, STATE OF TEXAS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 1, 1910.

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& 2 THE STATE OF TEXAS,
County of Milam:

At a term of the County Court, begun and holden within and for e County of Milam at Cameron on the 6th day of December A. D. 909, and which adjourned on the 25th day of December 1909, en Hon. Judge Watson thereof presiding, the following cause me on for trial, to-wit:

No. 1744.

W. R. DENNIS, Plaintiff,
vs.
G., C. & SANTA FE RAILWAY COMPANY, Defendant,

Transcript of Judgment.

Justice Court, Precinct No. —, —— County, Texas.

No. 54.

W. R. DENNIS, Plaintiff,
vs.
LF, COLORADO & SANTA FE RAILWAY COMPANY, Defendant.

J. S. Hearrell, Plaintiff's Att'y.
W. W. Chambers, Defendant's Att'y.

Justice's Fees.

keting suit	.10
ing 2 citations	1.00
ing 1 subpœna 7 names	.65
ing one bond	.50
ng 3 papers	.15
aring 7 witnesses	.70
ording verdict	.25
. final judgment	.50
ing appeal bond	.25
nscript of docket 1	.50
ing cost and copy	.10
	$5.60

Constable's Fees.

ing 1 citation	.70
ing 7 subpœnas	3.50
age	2.50
ness Fees	8.30
Total Costs	$20.60

Suit upon claim for $75.00 of date 26th October, due — interest —— filed 8th day of Oct. 1909: citation issued the 8th day of Oct. 1909, returnable to Oct. Term 1909 and placed in the hands of M. M. Reese, returned 11th: executed 8th day of Oct 1899. On this the 21st day of Oct. 1909, the above entitled and numb-red cause *coming* on to be heard, and plaintiff appeared and announced ready for trial and defendant came not but wholly made default. Therefore it appears to the court that the said defendant had been duly and legally summoned to appear and answer herein.

The evidence submitted is the opinion that the law is with the plaintiff wherefore it is ordered adjudged and decreed by the court that plaintiff W. R. Dennis do have and recover of and from the Gulf Colorado and Santa Fe Railroad Company the defendant the sum of $75.00 and the further sum of 20.00 att'y's fees, in the sum of 95.00 and for all cost for all of which execution may issue.

THE STATE OF TEXAS,
County of Milam:

I, J. D. Ruby Justice of the Peace, do hereby certify that the above and foregoing is a true and correct transcript of the entries on my docket, on page 54 in the cause of W. R. Deenis vs. Gulf Colorado and Santa Fe Railway Company.

Witness my hand this the 29 day of October 1909.

J. D. RUBY.
Justice of the Peace, Precinct No. 3, Milam Co., Texas.

No. 54.

4 No. 54. Transcript of Judgment, from Justice's Court. W. R. Dennis vs. Gulf Colorado and Santa Fe Railway Company. Filed this the 5 day of Nov. A. D. 1909. Jeff T. Kemp County Clerk, Milam County, Texas.

5 In the Justice's Court of Precinct No. 3, Milam County, Texas.

Before the Honorable, the Justice of the Peace in and for the said Precinct.

No. 54.

W. R. DENNIS, Plaintiff,
versus
GULF, COLORADO & SANTA FE RAILWAY COMPANY, Defendant.

Whereas W. R. Dennis the plaintiff, recovered a judgment against the Gulf Colorado & Santa Fe Railway Company the defendant in the above entitled and numbered cause, on the 21st day of October A. D. 1909 before the Honorable Justice of the Peace in and for Precinct No. 3 in the County of Milam, State of Texas for the sum of $95.00,) Nniety five & 00/100 Dollars with interest

thereon from said date at the rate of six per cent per annum, besides costs of suit, from which judgment the Said Gulf Colorado & Santa Fe Railway Company has appealed to the County Court of Milam County State of Texas.

Now therefore the said Gulf Colorado & Santa Fe Railway Company as principal and the other subscribers hereto as sureties acknowledged themselves bound to pay to the said W. R. Dennis the sum of ($250.00) Two Hundred Fifty Dollars conditioned that the said Gulf Colorado & Santa Fe Railway Company shall prosecute said appeal to effect, and shall pay off and satisfy the judgment which -ay be rendered against the said Gulf Colorado & Santa Fe Railway Company on such appeal.

Dated at Galveston, Texas this 25th day of October A. D. 1909.

GULF, COLORADO & SANTA FE RAILWAY COMPANY,
By TERRY CALVIN & MILLS, *Its Solicitors.*
JOHN SEALY.
H. O. STEIN.

THE STATE OF TEXAS,
County of Galveston:

I, J. C. Gengler Clerk of the District Court in and for said County of Galveston, do hereby certify that Jno. Sealy and H. O. Stein whose names appear signed to the annexed bond, are good ample security for the amount therein stipulated: that they have property in said County subject to execution to a larger amount and that if said bond was offered to me for approval the same would be accepted and approved.

To certify which I hereunto set my hand and the impress of my official seal at my office in the City of Galveston on this the
6 25th day of October 1909.

[SEAL.] J. C. GENGLER.
Clerk District Court, Galveston County,
By W. L. HANSCOM, *Deputy.*

No. 54. W. R. Dennis, Plaintiff, versus Gulf, Colorado & Santa Fe Railway Co., Defendant. Appeal Bond. Filed October 27th, 1909. J. D. Ruby, J. P. Pr. No. 3. Milam Co., Texas. Approved October 27th, 1909. J. D. Ruby, J. P. Pr. No. 3, Milam Co., Texas. Filed this the 30th day of Oct. A. D. 1909. Jeff T. Kemp, County Clerk Milam County, Texas.

7 In Justice Court, Precinct No. 3, Milam County.

No. 54.

The State of Texas to the Sheriff or any Constable of Milam County, Greeting:

You are hereby commanded to summon the Gulf Colorado and Santa Fe Railway Company if to be found in your county, to be and

appear before me, the undersigned, a Justice of the Peace in and for the County of Milam at my office in Milano Precinct No. 3, at the next regular term of said court, to be begun and holden on Thursday 21st day of Oct. 1909 at 10 o'clock A. M. then and there to answer the suit of W. R. Dennis Plaintiff against G. C. & S. F. Ry. Co. defendant, filed on the 8th day of Oct. 1909 file No. 54 for the sum of $75.00 Dollars a claim for damages.

Plaintiff alleges that heretofore to-wit: on the 26th day of Aug. A. D. 1909 he was the owner of one Jersey three year old cow. That on said date the defendant by its negligence prior to said time had permitted its right of way to be down and remain down, and that said cow was permitted to get into said enclosure and on the track of the defendant, or that defendant by its neglect and want of due care permitted its certain cattle guard about 1½ miles South of Milano to be out of repair and in such a condition that stock and cattle could and did cross over same, that by one or both of said negligent acts of the defendant as aforesaid plaintiff's cow got on to the defendant's railroad track and roadbed and was on the said 26th day of Aug. 1909 run over and killed by defendant's train and engine negligently.

Wherefore plaintiff asks that defendant be served with a copy of this citation and that on the final hearing hereof he have judgment in the sum of $75.00 and all costs and all general and special relief he may be entitled too & also $20.00 att'y's fees.

Herein fail not but of this writ make due return showing how you have executed the same.

Witness my official signature this 8 day of Oct, 1909.

J. D. RUBY,
Justice of the Peace, Precinct No. 3, Milam County, Texas.

8 *Constable's Return.*

Came to hand on the 8th day of Oct. 1909 at 7 o'clock P. M. and executed on the 8th day of Oct. 1909 be delivering to the Gulf Colorado & Santa Fe Railway Company by delivering a copy of this writ to Lee Sparrow its local agent at Milano in Milam Co., Texas, the within named defendant in person a true copy of this Citation.

M. M. REESE,
Constable Precinct No. 3, Milam County, Texas.

Fees:

Serving Copy	.70
Mileage	.10
Total	.80

Came to hand 8 day of Oct. 1909 and executed 8 day of Oct. 1909 by delivering to the Gulf Colorado and Santa Fe R. R. Co. to Lee Sparrow their agent in person a true copy of this citation.

Fees:

Serving copy	.70
Mileage 2 Miles	.10
Total	.80

M. M. REECE,
Constable Precinct No. 3, Milam County.

Filed this the 5 day of Nov. A. D. 1909. Jeff T. Kemp, County Clerk, Milam County, Texas. Citation in Justice Cou-t Milam County, Texas.

9 *Pleadings of Defendants.*

On trial of this cause the defendant plead:
General Demurrer to Plaintiff's Allegations,
Special Exception to that portion of plaintiff's pleadings in which he seeks to recover attorney's fees,
General Denial,
Plead specially, First that animal in question was struck on a public road crossing: second that the cattle guards on each side of said public road crossing were in good condition and repair, and that the right of way fence in the vicinity was in good repair.

10 In the County Court, Milam County, December Term, 1909.

No. 1744.

W. R. DENNIS
vs.
G., C. & S. FE RY. CO.

Gentlemen of the Jury: In this case the plaintiff sues the defendant for damages for alleged negligence in permitting its right of way fence to be down, and its cattle guard to be out of repair and in such condition that his cow could cross same, and that by one or both of said alleged negligent acts of the defendant his cow got on to the right of way of the defendant about a mile and a half below Milano, and was killed by a moving train or engine of the defendant, and he also prays for the sum of twenty dollars attorney's fees.

The defendant denies all and singular the allegations of the plaintiff. Now if you believe from the evidence that the defendant failed to exercise ordinary care to keep its fence around its right of way in such condition as to turn and keep out cattle of the class as the one in question, and of the ordinary disposition of such animals: Or if you find from the evidence that it failed to exercise ordinary care to keep and repair its cattle guard in question so as to turn or keep out cattle of the class as the one in question and

of the ordinary disposition of such animals and that the cow in question went into the right of way of defendant through its right of way fence at or near the vicinity of the place where she was found dead, or that she went into said right of way over said cattle guard or onto said cattle guard and as the direct proximate cause thereof was struck and killed by a moving engine or train of defendant, then your verdict should be for plaintiff, unless you find — defendant under further instructions hereinafter given you.

You are instructed that the defendant could not fence its right of way at -he public crossing where the cow was found dead, and in case you should find and believe from the evidence that the cow was struck by the moving engine or train of defendant at said crossing, then your verdict should be for the defendant.

If you find for the plaintiff your verdict should be for such sum as you believe from the evidence was the reasonable market value of said cow at the time and place she was killed, and in case you should find from the evidence that there was no market value for such cow at the time and place where she was so struck and killed then the measure of damages is the value of said animal in the nearest market to said place where she could be disposed of in the ordinary course of business.

If you find for the defendant y-u will say so and no more.

If your verdict for the plaintiff should be for as much as the sum of $75.00, you will also allow him the additional sum of $20.00 as attorney's fees. In case you should not find for plaintiff damages for as much as $75.00 you will not allow any sum as attorney fees.

The burden of proof is upon the plaintiff to prove every material allegation by a preponderance of the evidence.

The jury are the exclusive judges of the facts proven, the credibility of the witnesses, and the weight to be given to their testimony, but it is your duty to receive the law from the charges of the court, and to be governed thereby.

JOHN WATSON,
Judge Presiding.

No. 1744. W. R. Dennis vs. G. C. & S. F. R. R. Co. Charge of the Court. Filed December 15th. 1909. Jeff T. Kemp, County Clerk, Milam County, Texas.

In the County Court of Milam County, Texas, December Term, A. D. 1909.

No. 1744.

W. R. DENNIS
vs.
G., C. & S. F. RY. CO.

Defendant's Special Charge No. 3.

Gentlemen of the Jury: You are instructed that it was the duty of the defendant railway company in this case to keep the cattle

guard in question in such condition and repair that it would effectively turn back animals of the class as the one in question, and of the ordinary disposition*On* of such animals, and if the same was not in a condition dangerous and inviting to such animals, and was effectually performing said office of so turning said class of stock: then you are instructed that even if the animal in question was killed on said cattle guard, such does not constitute negligence in the defendant company, and you will find your verdict for said defendant.

JOHN WATSON,
County Judge Presiding.

12

CHAMBERS & BASKIN,
Att'ys for Defendant.

No. 1744. W. R. Dennis vs. G. C. & S. F. Ry. Co. Defendant's Special Charge Number Three. Filed December 15th 1909. Jeff T. Kemp, County Clerk, Milam Co., Texas.

"We the Jury find for the Plaintiff W. R. Dennis against the G. C. & S. F. Ry. Co. and assess his damages at $75.00 & Attorney Fees in the sum of $20.00.

S. S. McLANE, *Foreman.*

13 In the County Court of Milam County, Texas, December Term, A. D. 1909.

No. 1744.

W. R. DENNIS
vs.
G., C. & S. F. RY. CO.

Defendant's Special Charge No. 1.

Gentlemen of the Jury: You are instructed that in arriving at the value of the animal in question in this case, you shall not consider any special value placed upon same by plaintiff, but shall consider only the market value of said animal which must be established by the evidence, and which shall consist of the value that would be placed upon her in the nearest market where she could be disposed of in the ordinary course of business.

Refused.

JOHN WATSON,
County Judge Presiding.

CHAMBERS & BASKIN,
Att'ys for Defendant.

Filed this Dec. 15th, 1909. Jeff T. Kemp Co. Clerk, Milam Co., Texas.

In the County Court of Milam County, Texas, December Term, A. D. 1909.

No. 1744.

W. R. DENNIS
vs.
G., C. & S. F. RY. CO.

Defendant's Special Charge No. 2.

Gentlemen of the Jury: You are not to consider, in arriving at your verdict in this case, any evidence relating to a defective fence in the vicinity of the killing of the animal.

Refused.

JOHN WATSON,
County Judge Presiding.

CHAMBERS & BASKIN,
Att'ys for Defendant.

No. 1744. W. R. Dennis vs. G. C. & S. F. Ry. Co. Defendant's Special Charge Number Two. Filed Dec 15th, 1909. Jeff T. Kemp, Co. Clerk, Milam Co., Texas.

14 In the County Court of Milam County, Texas.

No. 1744.

W. R. DENNIS
vs.
G., C. & S. F. RY. CO.

Defendant's Special Charge No. 4.

Gentlemen of the Jury: You are instructed that plaintiff cannot recover any thing for attorney's fees in this case.

Refused.

JOHN WATSON,
County Judge Presiding.

CHAMBERS & BASKIN,
Attorneys for Defendant.

No. 1744. W. R. Dennis vs. G. C. & S. F. Ry. Co. Defendant's Special Charge Number Four. Filed Dec. 15th, 1909. Jeff T. Kemp, Co. Clerk Milam Co., Texas.

In the County Court of Milam County, Texas, December Term, A. D. 1909.

No. 1744.

W. R. DENNIS
vs.
G., C. & S. F. RY. Co.

Defendant's Special Charge No. 5.

Gentlemen of the Jury: You are instructed not to consider, in arriving at your verdict any evidence of a defective cattle guard in this case, unless you first find that said defective cattle guard was the direct and proximate cause of the injury, to said animal.

Refused.

JOHN WATSON,
County Judge Presiding.

CHAMBERS & BASKIN,
Attorneys for Defendant.

No. 1744. W. R. Dennis vs. G. C. & S. F. Ry. Co. Defendant's Special Charge Number Five. Filed Dec. 15th, 1909. Jeff T. Kemp, Co. Clerk Milam Co., Texas.

15 In the County Court of Milam County, Texas, December Term, A. D. 1909.

No. 1744.

W. R. DENNIS
vs.
G., C. & S. F. RY. Co.

Defendant's Special Charge No. 6.

Gentlemen of the Jury: You are instructed that it is your duty to find a verdict for the defendant in this case if you find from the evidence that the animal in question was struck upon the crossing of a public road over defendant's railway track, unless you further find that defendant railway company failed to use ordinary care in running over its tracks the locomotive or cars which struck said animal, if you believe any such locomotive or cars did strike said animal.

Refused.

JOHN WATSON,
County Judge Presiding.

CHAMBERS & BASKIN,
Attorneys for Defendant.

No. 1744. W. R. Dennis vs. G. C. & S. F. Ry. Co. Defendant's Special Charge Number Six. Filed Dec. 15th, 1909. Jeff T. Kemp County Clerk, Milam Co., Texas.

In County Court of Milam County, Texas, December Term, A. D. 1909.

No. 1744.

W. R. DENNIS
vs.
GULF, COLORADO & SANTE FE RAILWAY COMPANY.

Be it remembered that upon the trial of the above numbered and entitles cause just after plaintiff had stated his pleadings to the judge and jury, and before any evidence was offered, defendant directed a special exception to that portion of plaintiff's pleadings wherein he sought to recover attorney's fees and requested the Court to strike out same, for the following reasons that same is violative of the Fourteenth Amendment to the Constitution of the United States in that it denies this defendant the equal protection of the law there given and guaranteed: that the Act of the Legislature, under authority of which attorney's fee was claimed is class legislation, and does not give this defendant the same right that is given to the plaintiff in the action: that under said Act of the Legislature
16 this defendant is *defendant is* not permitted to recover an attorney's fee in case plaintiff's claim is defeated.

Whereupon the Court over-ruled defendant's said exception to which action of the Court the defendant then and there in open Court excepted.

And the defendant here now tenders this its Bill of Exceptions No. 1 and asks that same be approved, signed, and ordered filed as a part of the record of this cause, which is accordingly done.

Examined and approved this the 30 day of December A. D. 1909.

JOHN WATSON,
County Judge Presiding.

O. K.
U. S. H.

No. 1744. W. R. Dennis vs. Gulf Colorado & Santa Fe Railway Company. Defendant's Bill of Exceptions Number One.

17 In County Court of Milam County, Texas, December Term, A. D. 1909.

No. 1744.

W. R. DENNIS
vs.
GULF, COLORADO & SANTE FE RAILWAY COMPANY.

Be it remembered that upon the trial of the above numbered and entitled cause, the following facts and none other were proven:

This case was originally tried in the Justice Court of Precinct Number Three of Milam County, Texas, and a judgment was therein rendered for plaintiff in the sum of Seventy-five dollars damages and Twenty Dollars attorney's fees, from which judgment defendant duly appealed said cause to the County Court of Milam County, Texas.

GEO. W. MEADOWS, a witness for the plaintiff, testified as follows: I live about a mile and a half south of Milano. I know Dr. Dennis, the plaintiff in this cause. On or about the 27th day of August, 1909, I saw Dr. Dennis' Jersey cow dead near the track and on the defendant's right of way, about a mile and a half south of Milano Junction, Milam County, Texas. I live about three hundred yards from this place. The cow was about forty or fifty feet south of defendant's cattle guard and near its railway track. The cattle-guard had the ends broken off of three ties on the side next to the road, and had been in that condition from eight to twelve months. I know that a horse went through this cattle-guard, and I had seen cattle tracks on the inside of the right of way in the inclosure. The defendant's fence had been down near the cattle-guard for nearly a year and was still down. The grass on the inside of the defendant's inclosed right of way was better and greener than that on the outside. I saw on this cattle guard cow hair and a clot of blood. This hair and blood was on the first and second ties, on the side of the cattle-guard next to the inclosure, and this is the only sign I saw on the cattle-guard. About thirty feet from the cattle guard I saw
18 evidences where she was drug on defendant's track. This was a well made deep red, short-horn two and a half year old cow, which I would call a splended good heifer.

W. R. DENNIS, Plaintiff, testified in his own behalf, as follows: The first knowledge that I had that my cow had been killed was on the evening of the 26th day of August, 1909. Mr. Meadows' little boy conveyed the information to me. Near the place where my cow was killed, the cattle-guard was in bad condition. The ends of three ties had been broken off on the side *where* the road crossing. The right of way fence of defendant near this cattle-guard was down so that cattle could go through it, and had been so for quite awhile. I have been grading up my cattle for the last twenty-two years. This young cow, or heifer, was three-fourths Jersey and one fourth Durham, and she was heavy with calf, was looking for her to bring one any day. She was worth from $75 to $100. I presented my claim in writing for the value of this cow, $75, to the authorized Agent of the defendant at Milano, Texas, thirty two days prior to the institution of this suit, and it had not been paid or satisfied; and I employed U. S. Hearrell, an attorney, to represent me in the trials of this suit. He filed suit for me in Justice Court of Precinct Three, Milam County, Texas. The mother of this cow gave two gallons of milk per day, and I do not know how much butter.

RAYMOND BEARD, a witness for plaintiff, testified as follows:

I live six or seven miles from Dr. Dennis. I have been engaged in the cattle business, buying and selling cattle, for six or seven years. I have sold milk cattle and beef cattle. I know of Dr. Dennis' cattle. This cow that was killed of Dr. Dennis' was worth from $75 to $100. I had not seen the cow for a year before she was killed. When I last saw her she was yearling.

T. C. FISHER, a witness for plaintiff, testified as follows:

I live near Milano, Texas. I am acquainted with Dr. Dennis and know his cattle, and have known them for a number of years. I have for several years been engaged in handling and selling milk cows and Jersey cows, and dairy cattle. I know Dr. Dennis' cow that was killed, and she was worth from $75 to $100.
19 An untried heifer whose mother would give about two gallons of milk, would ordinarily be worth about $50.

GEORGE BLAND, a witness for plaintiff, testified as follows:

A cow of the description as given by G. W. Meadows of Dr. Dennis' cow that was killed, was worth $75. A cow, with a calf, giving two gallons of milk per day, would not be worth $50.

It was agreed by attorneys of the parties, that $20 was a reasonable attorney's fee in this case.

J. C. BEARD, a witness for defendant, testified as follows:

I live in the neighborhood where Dr. Dennis lives. I have been raising cattle for a number of years, and selling them to the butcher Markets. A two and a half year old heifer out of a cow which gave two gallons of milk per day would be worth not to exceed $30. I do not know the value of milk cattle. I do not know the value of a milk cow three fourths Jersey and one fourth Durham. If there is any market for such cattle at Milano, I do not know it.

WM. MCDEES, a witness for defendant, testified:

I am in the cattle business at Milano, and have for the last six or seven years been dealing in buying and selling beef and milk cattle. I am generally acquainted with Dr. Dennis' cattle. I do not know the particular heifer in question, but from my knowledge of Dr. Dennis' stock, this heifer could not have been worth more than $30 at the very highest value, for milk purpose or any other purpose. A cow which will give two gallons of milk per day is not worth more than $35 at the outside.

C. M. BEARD, a witness for defendant, testified as follows:

I was the deputy Tax Assessor in the territory around Milano, for 1909, and assessed the property of Dr. W. R. Dennis, plaintiff here. He rendered cattle, four head, at $8 per head, and swore
20 to the rendition. I put the price on these cattle. Dennis did not price the cattle to me. I put down common cattle at $8 per head, and if people had valuable cattle, they raised the price or amount of the rendition. I am acquainted with the value of cat-

tle in my neighborhood, and a heifer of the description of Dr. Dennis' heifer is worth not over $30. I am speaking of beef cattle. I consider a cow that will not give over two gallons of milk a day worth not over $30 even as a milk cow. I do not know the value of a three quarter Jersey and a one quarter Durham.

W. A. BAGGETT, a witness for the defendant, testified as follows: I was a Section Foreman in the employe of the defendant at the time Dr. Dennis' cow was killed. The cattle guard at the point in question had the ends of three ties next to the road crossing gone. I think it was sufficient to turn stock. There was an excavation eighteen inches deep under the cattle guard. There was a place where cattle could go through the fence near the cattle guard.

ALF SMITH, a witness for defendant, testified as follows: I was a Section hand in the employe of the defendant at the time Dr. Dennis' cow was killed. The cattle guard at the point in question had the ends of three ties next to the road crossing gone. I think it was sufficient to turn stock. There was an excavation eighteen inches deep under the cattle-guard. There was a place where cattle could go through the fence near the cattle guard. There was some cow hair on the end of the cattle guard next to the public road crossing. A public road crossed the railroad just north of the cattle guard upon which this hair was found.

21 In County Court of Milam County, Texas, December Term, A. D. 1909.

N. 1744.

W. R. DENNIS
vs.
GULF, COLORADO & SANTE FE RAILWAY COMPANY.

Agreement.

It is hereby agreed that the foregoing four pages constitute a true and correct statements of all the facts proven in the trial of the above numbered and entitled cause at said term.

U. S. HEARRELL,
Attorney for Plaintiff.
A. H. CULWELL,
CHAMBERS & BASKIN,
Attorneys for Defendant.

Approval.

The above and foregoing agreement, statement of facts proved, signed by the respective attorneys for the parties thereto, having

this day been examined by me, is found in all things correct, and is hereby approved and ordered filed as a part of the record in this case.

JOHN WATSON,
County Judge, Milam County, Texas.

This the 27th day of December, A. D. 1909.

22 In the County Court of Milam County, Texas, December 14th, A. D. 1909.

No. 1744.

W. R. DENNIS
vs.
GULF, COLORADO & SANTA FE RAILWAY COMPANY.

This day, this cause coming on to be heard, came the plaintiff in person and by attorney, and came the defendant by its attorneys, and announced ready for trial, and a jury having been demanded thereupon came a jury of good and lawful men, to-wit, S. S. McLan and five others, who being duly impanelled and sworn to try said cause, after hearing the pleadings of the parties, the evidence, and the charge of the Court, returned into Court, on the 15th day of December A. D. 1909, the following verdict:

"We, the jury, find for the plaintiff, W. R. Dennis, against the G. C. & S. F. Ry. Co. and assess his damages at $75 & attorney's fees in the sum of $20.00.

S. S. McLANE, *Foreman.*"

It is therefore considered, ordered adjudged and decreed by the Court that plaintiff, W. R. Dennis, do have and recover of defendant, the Gulf, Colorado & Santa Fe Railway Company, the sum of $95, with interest thereon from this date until paid, at the rate of 6 per cent per annum, together with his costs in this behalf expended, and that he have his execution.

23 In the County Court of Milam County, Texas, December Term, A. D. 1909.

No. 1744.

W. R. DENNIS
vs.
GULF, COLORADO & SANTA FE RAILWAY COMPANY.

Now comes the defendant, the Gulf Colorado & Santa Fe Railway Company, by its attorneys, and prays the court to set aside the verdict and judgment heretofore rendered herein against it on the 15th day of December A. D. 1909, and to grant a new trial of this cause, for the following good and sufficient reasons to-wit:

1.

Because the Court erred in each and every paragraph of its charge to the jury, in this, that said paragraph of said charge incorrectly state- the law applicable to this cause and the evidence adduced herein, are upon the weight of evidence, give undue prominence to plaintiff's pleadings to *to* defendant's great prejudice, and are manifestly detrimental to the rights of this defendant.

2.

Because the court erred in failing and refusing to submit to the jury defendant's special charges Nos. 1, 2, 4, 5 and 6 for the reason that said charges were each and every one applicable to the evidence adduced in this cause, and each and every one correctly expounded the law covering the issue to which it was directed.

3.

Because the court erred in permitting counsel for plaintiff to indulge on improper argument before the jury, in this that he permitted counsel (U. S. Hearrell) to discuss to the jury proceedings had before the impanelling of a jury, in disposing of defendant's motion that plaintiff be required to give security for costs incurred upon the trial of this cause such argument being permitted over objection of this defendant, to which defendant saved its exception: all of which more fully appears in defendant's bill of exception No. hereby referred to and made a part hereof.

4.

Because the verdict rendered in this case is unconscionable, unreasonable and outrageous and wholly without support either in law the evidence adduced: and because the verdict shows incontrotibly on its face that it was engendered in prejudice and brought rth in entire indifference to the rights of this defendant in the ht of justice and the law.

5.

Because the Court erred in overruling defendant's general deurrer to pleadings of the plaintiff.

6.

Because the court erred in overruling defendant's special exception to that portion of plaintiff's pleadings praying for attorney's s under certain *rpoof* in this cause, which is more fully shown defendant's bill of exception No. 1 hereby referred to.

7.

Because the court erred in submitting to the jury the following agraph of its charge:

If you- verdict for the plaintiff should be for as much as the of $75.00, you will still allow him the additional sum of $20.00 ttorney's fees. In case you should not find for plaintiff damages

for as much as $75.00 you will not allow plaintiff any sum as attorney's fees" for the reason that same is on the weight of the evidence, and for the reason that same is violative of the Fourteenth Amendment of the Constitution of the United States, in that it denies this defendant the equal protection of the law there given and guaranteed: for the reason that the Act of the Legislature under authority of which this charge was given, is class legislation and does not give to this defendant the same right that is given to the plaintiff in the action: and for the reason that under said Act of the Legislature the defendant is not permitted to recover an attorney's fee in case plaintiff's claim is defeated.

Wherefore, defendant prays the court to grant this, its said motion and to set aside the verdict and judgment rendered herein against it on the 15th day of December A. D. 1909 and to order a new trial of this cause.

A. H. CULWELL,
CHAMBERS & BASKIN,
Attorneys for Defendant.

No. 1744. W. R. Dennis vs. G. C. & S. F. Ry. Co. Defendant's Original Motion for a new trial. Filed December 16, 1909. Jeff T. Kemp, County Clerk.

25 In County Court of Milam County, Texas, December 23rd, 1909.

No. 1744.

W. R. DENNIS
vs.
G., C. & S. F. RY. CO.

On this, the 23rd day of December A. D. 1909 came on to be considered the defendant's motion to set aside the verdict and judgment rendered herein against it on the 15th day of December A. D. 1909 and grant it a new trial of this cause, and the court having heard the motion read and argument of counsel is of the opinion that same ought to be in all things overruled.

It is therefore considered adjudged and decreed by the court that said motion be and is hereby in all things overruled to which ruling of the court, the defendant, in open court, then and there excepted and gave notice of appeal to the court of Civil Appeals of the Third Supreme Judicial District of Texas, at Austin, Texas. And it is further ordered by the court that defendant be granted twenty days, and all other time allowed by law, after adjournment of this court, in which to prepare, file and have approved its bills of exceptions, and to file its statement of facts and assignment of errors.

No. 1744. W. R. Dennis vs. G., C. & S. F. Ry. Co. Decree: Overruling defendant's motion for a new trial.

26 No. 1744.

W. R. DENNIS
vs.
G., C. & S. F. Ry. Co.

To Docketing	.10
" 4 files	.20
Iss. 3 subpœnas and 15 names	1.35
To app	.05
Swearing 16 witnesses	1.60
" jury & verdict	.50
Entering judgment	.50
" " Overruling motion	.50
15 affidavits	3.75
Taxing cost	.25
6 files	.30
Transcript fee	7.50
County Clerk's Cost	16.60
" Judge's "	3.00
J. P. No. 3	5.60
Constable Pre. No. 3	8.30
Witness fees	50.66
Sheriff Cost	11.10
Total cost	95.26

27 THE GULF, COLORADO & SANTA FE RAILWAY CO., Plaintiff in Error,
vs.
W. R. DENNIS, Defendant in Error.

Petition for Allowance of Writ of Error.

To the Honorable the Supreme Court of the United States:

Comes The Gulf, Colorado & Santa Fe Railway Company, by its attorneys J. W. Terry, Gardiner Lathrop, A. B. Browne and A. H. Culwell and complains that in the record and proceedings, as also in the rendition of a judgment in a suit between the Gulf, Colorado & Santa Fe Railway Company in the County Court of Milam County, Texas, being the highest court of law or equity in said State to which the said plaintiff in error could appeal and obtain a decision on the merits of the issues involved in said cause, and same being the court which has the final custody of the record in said cause, and that final judgment having been rendered against the said plaintiff in error by the said County Court of Milam County, Texas, on the 15th. day of December 1909, and in which plaintiff in error's motion for a new trial was over-ruled by said Court on the 23rd. day of December, 1909.

That in said cause there is drawn in question the validity of a statute of the State of Texas, same being known as Chapter 47, General Laws of the State of Texas, passed by the 31st. Legislature, and being "An act to regulate the presentation and collection of claims for personal services or for labor rendered, or for material furnished, or for over-charge in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation -gainst any person or corporation doing business in this State and providing a reasonable amount of attorney's fees to be recovered in cases where the amount of such claims shall not exceed $200.00, and declaring an emergency.

And the County Court of Milam County, Texas, having imposed and awarded judgment against plaintiff in error for the sum of $20.00 as an attorney's fee to the defendant in error, in addition to the amount awarded as the value of the animal killed, and which said judgment is now a final judgment, and from which there is no appeal to any other court or courts within the State of Texas;

That plaintiff in error plead in that court that the said act of the Legislature was unconstitutional and in contravention of Section 1, 14th. amendment to the Constitution of the United States,
28 which plea as presented in said County Court was by said Court overruled, and the said act of the Legislature declared constitutional. And you- petitioner here represents that said act of the Legislature denies to it the equal protection of laws, and deprives it of its property without due process of law, and that same is in contr-vention to said Section 1, 14th. amendment to the Constitution of the United States, and that there is here drawn in question the validity of a statute of, or an authority exercised under, said State of Texas, on the ground of their being repugnant to the constitution, treaties of laws of the United States, and the decision was in favor of such their validity, all of which appears in the records and proceedings in said suit; manifest error hath happened to the great damage of the Gulf, Colorado & Santa Fe Railway Company.

Wherefore the said The Gulf, Colorado & Santa Fe Railway Company, by its attorneys, prays an allowance of writ of error, and such other process as may cause the same to be corrected by the Supreme Court of the United States.

J. W. TERRY,
GARDINER LATHROP,
A. B. BROWNE, AND
A. H. CULWELL,
Attorneys for the Gulf, Colorado & Santa Fe Railway Company.

The Gulf, Colorado & Santa Fe Railway Company, Plaintiff in Error, vs. W. R. Dennis, Defendant in Error. Filed this the 20th. day of January A. D. 1910. Jeff T. Kemp, County Clerk, Milam County, Texas.

29 THE GULF, COLORADO & SANTA FE RAILWAY COMPANY,
Plaintiff in Error,
vs.
W. R. DENNIS, Defendant in Error.

Writ of Error Bond.

Know all men by these Presents: That we, The Gulf, Colorado & Santa Fe Railway Company, as principal, and Jno. Sealy and H. O. Stein as sureties, are held and firmly bound unto W. R. Dennis in the full and just sum of Five Hundred Dollars to be paid to the said W. R. Dennis, his certain attorney, executor, administrator or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals. Dated this 6th day of January, in the year of our Lord, One Thousand Nine Hundred and Ten.

Whereas, lately at a County Court of Milam County, Texas, in a suit pending in said Court between W. R. Dennis, plaintiff, and the Gulf, Colorado & Santa Fe Railway Company, defendant, a judgment was rendered against the said defendant, The Gulf, Colorado & Santa Fe Railway Company, and the said defendant, The Gulf, Colorado & Santa Fe Railway Company, having obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and the citation directed to the said W. R. Dennis citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington thirty days from the date hereof.

Now, the condition of the above obligation is such, that if the said defendant, The Gulf, Colorado & Santa Fe Railway Company, shall prosecute its writ of error to effect, and answer all damages and costs, if it fail to make its plea good, then the above obligation to be void, else to remain in full force and effect.

[SEAL.] THE GULF, COLORADO & SANTA FE RAILWAY CO.,
By TERRY, CAVIN & MILLS, *Solicitors.*
JOHN SEALY.
H. O. STEIN.

Attest:
A. C. TORBERT,
Secretary The Gulf, Colorado & Santa Fe Railway Co.

Approved by
EDWARD D. WHITE,
Associate Justice Supreme Court of the United States.

Writ to operate as a supersedeas.

30 I, Jno. Sealy, do solemnly swear that I am worth in my own right at least the sum of Five Thousand Dollars, after deducting from my property that which is exempt by the Constitution and laws of the State from forced sale, and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all incumbrances on my property which are known to me; That I reside in Galveston County, State of Texas, and have property in said State liable to execution worth more than Five Thousand Dollars.

JOHN SEALY.

Sworn to and subscribed before me this 6th day of January 1910.

[SEAL.] CHAS. S. PECK,
Notary Public in and for Galveston County, Texas.

I, H. O. Stein, do solemnly swear that I am worth in my own right at least the sum of Five Thousand Dollars after deducting from my property that which is exempt by the constitution and laws of the State from forced sale, and after the payment of all my debts of every description, whether individual or security debts and after satisfying all incumbrances on my property which are known to me; that I reside in Galveston County, State of Texas, and have property in said State liable to execution worth more than Five Thousand Dollars.

H. O. STEIN.

Sworn to and subscribed before me this 6th day of January, 1910.

[SEAL.] CHAS. S. PECK,
Notary Public in and for Galveston County, Texas.

Filed this the 20th day of January, A. D. 1910. Jeff T. Kemp, County Clerk, Milam County, Texas.

31 In the County Court of Milam County, Texas.

THE GULF, COLORADO & SANTA FE RAILWAY COMPANY, Plaintiff in Error,
vs.
W. R. DENNIS, Defendant in Error.

In Error from the County Court of Milam County, Texas, to the Supreme Court of the United States.

Now comes the Gulf, Colorado and Santa Fe Railway Company, plaintiff in error, by its attorneys, J. W. Terry, Gardiner Lathrop, A. B. Browne, and A. H. Culwell, and says that in the records and proceedings aforesaid, there is manifest error in the judgment and decision of the County Court of Milam County, Texas, to-wit:

First. That County Court of Milam County erred in holding that the Railway Company was responsible to the plaintiff for an attor-

ney's fee in this Cause, and in holding that Chapter 47, General Laws of the State of Texas, passed by the 31st Legislature and being

"An act to regulate the presentation and correction of claims for personal services or for labor rendered, or for material furnished or for overcharge in freight or express, or for any claim to loss of damaged freight, or for stock killed or injured by any business or corporation against any business or corporation, doing business in this State, and providing a reasonable amount of attorney's fees to be recovered in cases, where the amount of such claims shall not exceed $200.00, and declaring an emergency."

was constitutional, and that the same was not in contravention of of Section One, 14th Amendment to the Constitution of the United States and did not deny to the defendant, equal protection of the laws, and did not deprive the defendant of its property without due process of law.

Second. The County Court of Milam County, erred in overruling and failing to grant the plaintiff in error, a new trial based upon the seventh ground of its motion therefor, which was submitted in said Court, and which was as follows:

"Because the Court erred in submitting to the jury, the following paragraph of its charge:

If your verdict for the plaintiff should be as much as for the sum of $75.00, you will allow an additional sum of $20.00 as attorney's fees. In case you should not find for plaintiff, damages as much as $75.00, you will not allow plaintiff any sum as attorney's fees; for the reason that same is on the weight of the evidence; for the reason that the same is violative of the 14th Amendment to the Constitution of the United States, in that it denies this defendant
32 the equal protection of the law there given and guaranteed; for the reason that the act of the Legislature, under authority, by which this charge was given, is class legislation, and does not give this defendant, the same right that is given to the plaintiff in the action; for the reason that under the Act of Legislature, the defendant is not permitted to recover an attorney's fee in case plaintiff's claim is defeated."

Third. The Act of the Texas Legislature, under which judgment for an attorney's fee was awarded to the plaintiff in the action, is and was *was* unconstitutional, and the same is in contravention of Section One, of the Fourteenth Amendment to the Constitution of the United States, and the same denies to the defendant in the action the equal protection of the laws guaranteed by said amendment to the Constitution; under the provisions of said Act of the Legislature, the defendant in the action is deprived of its property without due process of law, and the County Court of Milam County erred in not so holding.

Respectfully Submitted,

J. W. TERRY,
GARDINER LATHROP,
A. B. BROWNE AND
A. H. CULWELL,
Attorneys for Plaintiff in Error

Filed this the 20th day of January A. D. 1910. Jeff T. Kemp, County Clerk, Milam County, Texas.

33 THE GULF, COLORADO & SANTA FE RAILWAY CO., Plaintiff in Error,
vs.
W. R. DENNIS, Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judge of the County Court of Milam County, Texas, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said County Court of Milam County, Texas, before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between W. R. Dennis, plaintiff, and The Gulf, Colorado & Santa Fe Railway Company, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege or *examination*, specially set up or claimed under such clause of the said Constitution, treaty, statute or commission, *and* manifest error hath happened to the great damage of the said defendant, The Gulf, Colorado & Santa Fe Railway Company, as by its complaint appears, we being willing, that error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof in the said Supreme Court
34 to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 12th day of January, in the year of our Lord One Thousand Nine Hundred and Ten.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk Supreme Court of the United States.

To operate as a supersedeas on furnishing bond for Five hundred (500) Dollars.

EDWARD D. WHITE.

Allowed by:
EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

35 [Endorsed:] The Gulf, Colorado & Santa Fe Railway Company, Plaintiff in Error vs. W. R. Dennis, Defendant in Error. Writ of Error. Filed this the 20th day of January A. D. 1910. Jeff T. Kemp, County Clerk, Milam County, Texas. By —— ——, Deputy.

36 THE GULF, COLORADO & SANTA FE RAILWAY CO., Plaintiff in Error,
vs.
W. R. DENNIS, Defendant in Error.

The President of the United States to W. R. Dennis, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the County Court of Milam County, Texas, wherein The Gulf, Colorado & Santa Fe Railway Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Associate Justice of the Supreme Court of the United States this the 12th day of January, in the year of our Lord One Thousand Nine Hundred and Ten.

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

On this 20th day of January in the year of our Lord One Thousand Nine Hundred and Ten personally appeared J. E. Hattzclaw, Sheriff of Milam County, Texas, before me, a Notary Public in and for Milam County, Texas, and makes oath that he delivered a true copy of the within citation to U. S. Hearrell who is the attorney of record of the within nanted W. R. Dennis, defendant in error.

J. E. HATTZCLAW,
Sheriff of Milam County, Texas.

Sworn to and subscribed before me this — day of ——, A. D. 1910, by the said J. E. Hattzclaw, affiant.

[Seal Notary Public, Milam County, Texas.]

ED. F. ENGLISH,
J. P. and ex-Officio Notary Public in and for Milam County, Texas.

37 [Endorsed:] The Gulf, Colorado & Santa Fe Railway Company, Plaintiff in Error, vs. W. R. Dennis, Defendant in Error. Citation. Filed this the 20th day of January A. D. 1910. Jeff T. Kemp, County Clerk, Milam County, Tex. By —— ——, Deputy.

Fees:

For serving this citation	.75
Mil-age	.10
	.85

J. P. & Ex-off. Not. Public, 50 cts.

38 STATE OF TEXAS,
County of Milam:

I, Jeff T. Kemp, Clerk of the County Court of Milam County, Texas, do hereby certify that the foregoing 35 pages, contain a full, true, and correct transcript of the record, and of all papers filed and proceedings had together with the original writ of error and citation, respectively, in Cause No. 1744, W. R. Dennis vs. The Gulf, Colorado and Santa Fe Railway Company, as the same appear upon file and upon record in my office.

In Testimony Whereof, I have hereunto set my hand, with the seal of said Court, this 21st day of January, A. D., 1910.

[Seal County Court of Milam County, Texas.]

JEFF T. KEMP,
Clerk County Court Milam County, Texas.

39 [Endorsed:] No. 1744. Gulf, Colorado & Santa Fe Ry. Co., appellant, plaintiff in error, vs. W. R. Dennis, appellee, defendant in error. From the County Court of Milam County. Applied for by Chambers & Baskin, attorney for G. C. and S. F. Ry. Co., on the 17th day of January, 1910, and delivered to Chambers & Baskin on the 22nd day of January, 1910. Jeff T. Kemp, Clerk, Court, Milam County, Texas.

Endorsed on cover: File No. 22,005. Texas, Milam County, County Court. Term No. 429. The Gulf, Colorado & Santa Fe Railway Company, plaintiff in error, vs. W. R. Dennis. Filed February 4th, 1910. File No. 22,005.

MAR 5, 1912
JAMES H. McKENNEY,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 203.

THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, PLAINTIFF IN ERROR,

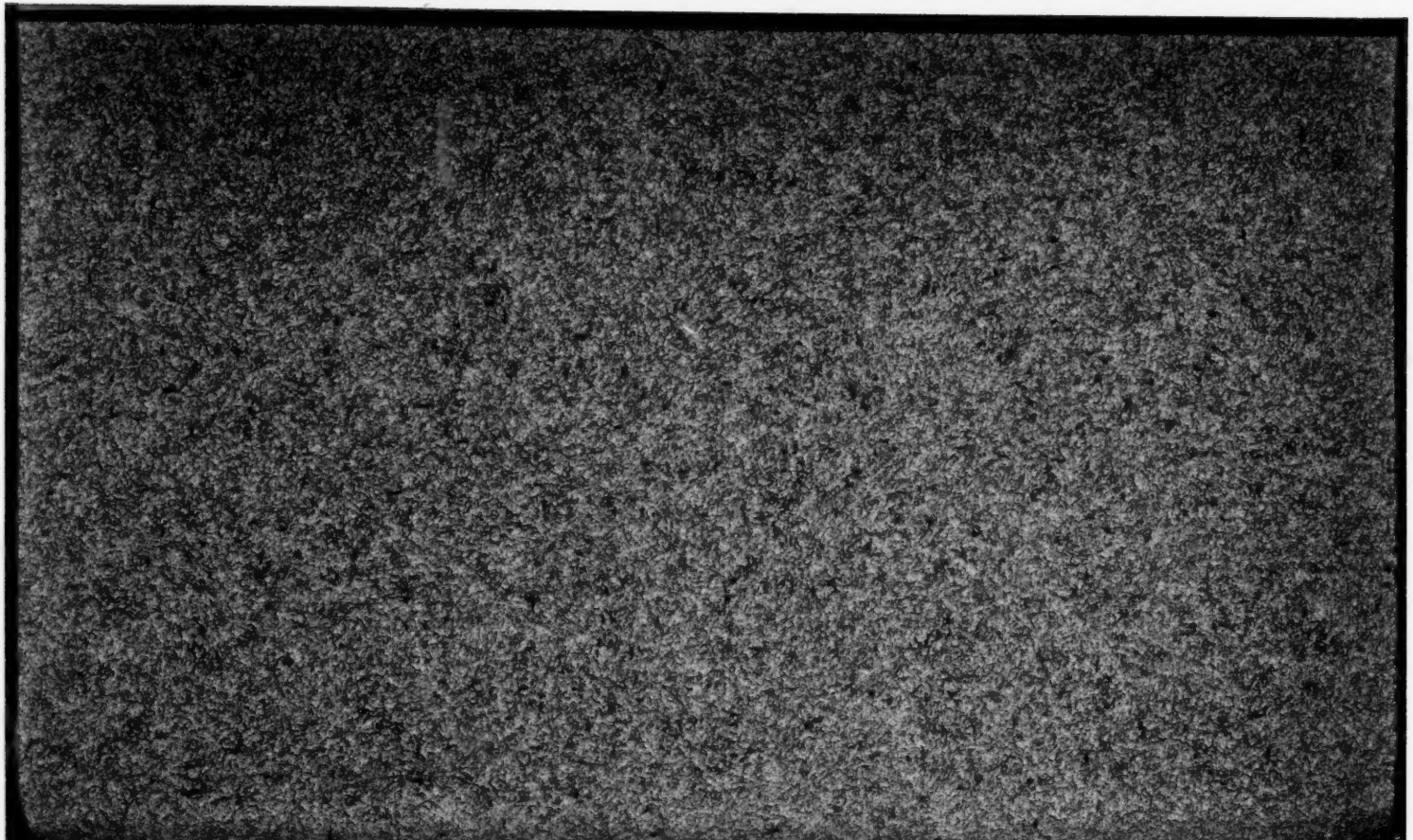
vs.

W. R. DENNIS.

IN ERROR TO THE COUNTY COURT OF MILAM COUNTY, STATE OF TEXAS.

BRIEF FOR PLAINTIFF IN ERROR.

J. W. TERRY,
GARDINER LATHROP,
A. B. BROWNE,
A. H. CULWELL,
ALEXANDER BRIGHAM,
EVANS BROWNE,
Counsel for Plaintiff in Error.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 203.

THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

W. R. DENNIS.

IN ERROR TO THE COUNTY COURT OF MILAM COUNTY, STATE OF TEXAS.

BRIEF FOR PLAINTIFF IN ERROR.

This case originated in a justice's court of Milam county, Texas, where suit was brought against plaintiff in error for damages alleged to have been sustained, in amount $75.00, through the negligent killing of a cow by one of its trains (Rec., pp. 1-2). Judgment there was for the plaintiff below in the sum sued for, and also for a

further sum of $20.00 as attorney's fee (Rec., p. 2). Thereupon plaintiff in error appealed to the County Court of Milam County, Texas, pleadings were filed and issues raised, the case tried before a jury, and verdict returned for the plaintiff below (Rec., pp. 2 to 14). Judgment was thereafter entered for plaintiff below for damages in the sum of $75.00 and for an attorney's fee in the sum of $20.00, a total of $95.00, with costs (Rec., p. 14).

The Federal question was distinctly raised at the trial by a special exception of the defendant to that portion of plaintiff's pleadings wherein was sought recovery of attorney's fees, and a request of the court to strike out such part of the pleadings on the ground that the same was violative of the Fourteenth Amendment to the Constitution of the United States in that it denied defendant the equal protection of the law there given and guaranteed: that the act of the legislature of Texas under authority of which attorney's fee was claimed was class legislation, and did not give to defendant the same right as was given to the plaintiff in the action, and that under said act the defendant was not permitted to recover an attorney's fee in case plaintiff's claim was defeated. This is set forth fully in the bill of exceptions signed by the trial judge (Rec., p. 10). The Federal question is also raised by the assignments of error (Rec., pp. 20-21).

A motion for new trial was made by plaintiff in error, and denied (Rec., p. 14), and the judg-

ment of said county court of Milam county being final, this writ of error was sued out. The record was filed in the clerk's office of this court on February 4, 1910.

The judgment of the county court of Milam county was final, as that court was the highest court in the State to which the case could be taken.

Gulf, Colorado & Santa Fe Ry. vs. Helfley, 158 U. S., 98-100.

The question which is presented in this case has, since the case was docketed here, been practically decided by one of the Courts of Civil Appeals in Texas, and review of that court's decision on the question has been refused by the Supreme Court of that State, on application to it for writ of error therein. Inasmuch as a dismissal of the present writ of error would mean affirmance of the judgment below, plaintiff in error has deemed it proper to submit the case to this honorable court upon a brief explanation of the situation in which the case now stands.

That part of the judgment below awarding attorney's fees to the plaintiff was based upon an act of the Thirty-first Legislature of Texas (1909) which appears as chapter 47, page 93, of the official publication. That act and the title preceding it read:

> "An Act to regulate the presentation and collection of claims for personal services or for labor rendered, or for material

furnished, or for overcharge in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered, in cases where the amount of such claims shall not exceed two hundred ($200) dollars, and declaring an emergency.

"Be it enacted by the legislature of the State of Texas:

"SECTION 1. That hereafter any person in this State, having a valid *bona fide* claim against any person or corporation doing business in this State, for personal services rendered or for labor done, or for material furnished or for overcharges on freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by such person or corporation, its agents or employees, may present the same to such person or corporation, or to any duly authorized agent thereof, in any county where suit may be instituted for the same; and if, at the expiration of thirty days after the presentation of such claim, the same has not been paid or satisfied, he may immediately institute suit thereon in the proper court, and if he shall finally establish his claim, and obtain judgment for the full amount thereof, as presented for payment to such person or corporation in such court he shall be entitled to recover the amount of such claim and all costs of suit, and in addition thereto a reasonable amount as attorney's fees, provided, he has an attorney

employed in the case, not to exceed twenty ($20.00) dollars, to be determined by the court or jury trying the case; provided, however, that nothing in this act shall be construed to repeal or in any manner affect any provision of the law now in force giving a remedy to persons having claims of the character mentioned in this act, but the same shall be considered as cumulative of all other remedies given to such person or persons.

"SECTION 2. The fact that there is no law now in force in this State providing an effectual remedy for persons having such claims as are mentioned in this act, creates an emergency and an imperative public necessity requiring the suspension of the constitutional rule requiring bills to be read on three several days, and this act shall take effect from and after its passage, and it is so enacted."

The writ of error herein was sought on the ground that this statute was invalid as being in contravention of section one of the Fourteenth Amendment to the Federal Constitution, in that it *denied to the defendant* the equal protection of the law, and deprived the defendant of its property without due process of law.

This statute has, however, since this case was brought here, been held by the Texas Court of Civil Appeals to contravene the Constitution of the State of Texas, because it contained more than one subject of legislation.

Fort Worth and Denver City Ry. Co. vs. Loyd, 132 S. W. R., 899.

The opinion of the court in the case cited was rendered on November 19, 1910, some months after the present case was docketed here, and is printed in full in the appendix to this brief. While the point was raised therein that the statute was in violation of the Federal Constitution, the court, in view of its conclusion that it was void as in contravention of the State Constitution, refused to pass upon that question, and left it undecided.

Application was thereupon made to the Supreme Court of Texas, the highest court of that State, for writ of error, which was denied. A certified copy of the judgment of the court so refusing the application has been filed here and is also printed in the appendix. The refusal of that court, therefore, to grant the application for writ of error, made final and controlling the action of the Court of Civil Appeals holding the statute void, as in contravention of the State constitution.

Not only is the statute in the instant case void for conflict with the State constitution, but it is likewise void as contravening the Fourteenth Amendment of the Federal Constitution, in that it operates to deprive the railroad defendants of property without due process of law, and denies to them the equal protection of the law, since it singles them out of all citizens and corporations, and requires them to pay in certain cases attorney's fees to the party successfully suing them, while it gives to them no like or corresponding benefit. This was so held in the case of *Gulf, Colo-*

rado and Santa Fe Ry. Co. vs. Ellis, 165 U. S., 150, where was called in question the constitutionality of the act of the Texas legislature of April 5, 1889, which was in effect identical with the present statute and, to a large extent, similar in language. That the present statute is aimed, as was that act, at defendant common carriers is manifest.

It is submitted that the judgment below should be reversed.

Respectfully submitted,

J. W. TERRY,
GARDINER LATHROP,
A. B. BROWNE,
A. H. CULWELL,
ALEXANDER BRITTON,
EVANS BROWNE,
Counsel for Plaintiff in Error.

APPENDIX

FORT WORTH & D. C. RY. CO. *vs.* LOYD.*

(Court of Civil Appeals of Texas. Nov. 19, 1910. Rehearing Denied Dec. 10, 1910.)

1. Statutes (sec. 61**)—Title and Subjects of Acts—Construction:

Where an act contains a single provision which is broader than the title, the court may not narrow and change the ordinary meaning of the words employed in the act so as to sustain it as to cases falling within the title.

(ED. NOTE.—For other cases, see Statutes, Cent. Dig., sec. 196; Dec. Dig., sec. 61**.)

2. Statutes (secs. 64, 117**)—Title and Subjects of Acts—Partial Invalidity:

Acts 31st Leg., c. 47, entitled "An act to regulate the presentation and collection of claims or for personal services or for labor rendered, or for overcharges in freight, etc., against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered, in cases where the amount of such claims shall not exceed $200," etc., and in section 1, permitting a recovery of attorney's fees in all suits on the same character of claims without re-

* Writ of error denied by Supreme Court.

** For other cases see same topic and section number in Dec. Dig. and Am. Dig. Key No. Series and Rep'r Indexes.

gard to the amount thereof, violates Const., art. 3, sec. 35, providing that no bill shall contain more than one subject, which shall be expressed in its title, etc., and since the act refers to all claims of the character therein specified collectively, and in the same language, it cannot be held valid as applicable to claims not in excess of $200, but is void in its entirety.

(Ed. Note.—For other cases, see Statutes, Cent. Dig., sec. 195; Dec. Dig., secs. 64, 117.**)

Appeal from Wise County Court; C. V. Terrell, judge.

Action by Coke Loyd against the Ft. Worth & Denver City Railway Company. Judgment for plaintiff, and defendant appeals. Reversed and rendered.

Spoonts, Thompson & Barwise, McMurray & Gettys, and J. M. Chambers, for appellant. R. E. Carswell, for appellee.

Dunklin, *J.*: Coke Loyd sued the Ft. Worth & Denver City Railway Company to recover $150 as damages to a shipment of cattle transported by the railway company from Decatur to Ft. Worth. By the judgment, from which the railway company has appealed, plaintiff was awarded $143.50 as damages and $20.00 additional as attorney's fees. Evidently the recovery for attorney's fees was predicated upon an act of the Thirty-first Legislature (1909), which appears as chapter 47, p. 93, of the official publication. That act and the title preceding read:

"An act to regulate the presentation and collection of claims for personal services or for labor rendered, or for material furnished, or for overcharges in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered, in cases where the amount of such claims shall not exceed two hundred ($200) dollars and declaring an emergency.

"Be it enacted by the legislature of the State of Texas:

"SECTION 1. That hereafter any person in this State, having a valid *bona fide* claim against any person or corporation doing business in this State, for personal services rendered or for labor done, or for material furnished, or for overcharges on freight or express, or for any claim for lost or damaged freight, or for stock killed, or injured by such person or corporation, its agents or employees, may present the same to such person or corporation, or to any duly authorized agent thereof, in any county where suit may be instituted for the same; and if, at the expiration of thirty days after the presentation of such claim, the same has not been paid or satisfied, he may immediately institute suit thereon in the proper court, and if he shall finally establish his claim, and obtain judgment for the full amount thereof, as presented for payment to such person or corporation in such court he shall be entitled to recover the amount of such

claim and all costs of suit, and in addition thereto a reasonable amount as attorney's fees, provided he has an attorney employed in the case, not to exceed twenty ($20.00) dollars, to be determined by the court or jury trying the case; provided, however, that nothing in this act shall be construed to repeal or in any manner affect any provision of the law now in force giving a remedy to persons having claims of the character mentioned in this act, but the same shall be considered as cumulative of all other remedies given to such person or persons.

"SEC. 2. The fact that there is no law now in force in this State providing an effectual remedy for persons having such claims as are mentioned in this act creates an emergency and an imperative public necessity requiring the suspension of the constitutional rule requiring bills to be read on three several days and this act shall take effect from and after its passage and it is so enacted."

Appellant has assigned error to the award of attorney's fees upon the ground that the act quoted above was in violation of article 3, section 35, of our State Constitution of 1876, in that the title recites an act allowing the recovery of attorney's fees in suits upon claims of the character mentioned in the title when the amount of the claim asserted does not exceed $200, while in the body of the act a recovery of attorney's fees is permitted in all suits upon the same character of claims without regard to the amount thereof. Section 35, art. 3, of the Constitution, reads: "No bill (except general appropriation bills, which may embrace the various subjects and accounts for and

on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

In Tax Collector *vs.* Finley, 88 Tex., 521; 32 S. W., 525, our Supreme Court in discussing the foregoing provision of the Constitution said: "It was doubtless intended by section 35 to prevent certain practices sometimes resorted to in legislative bodies to secure legislation contrary to the will of the majority: One, that of misleading members by incorporating in the body of the act some subject not named in the title; the other, that of including in the same bill two matters foreign to each other, for the purpose of procuring the support of such legislators as could be induced to vote for one provision merely for the purpose of securing the enactment of the other." Clearly, the body of the act embraces claims not included in the title. If the body of the act had been so framed that such claims could be rejected from its operation without changing or adding to the language of the act, then, in accordance with the constitutional provision quoted, the act would be held valid as applicable to claims not in excess of $200, and rejected when invoked in suits upon claims amounting to more than $200. But the act refers to all claims of the character therein specified collectively and in the same language, and to say that it shall apply only to claims not in excess of $200 would be to change or limit the ordinary meaning of the language employed. Such a construction is not permissible even under the liberal rule obtaining in the construction of statutes when assailed as being in contravention of the constitution.

In Sutherland on Statutory Construction, in section 87, the following is said: "The title cannot be enlarged by construction when too narrow to cover all the provisions in the enacting part, nor can the purview be contracted by construction to fit the title, but the title, if delusively general, may be sufficient though more extensive than the purview." The foregoing is in accord with the following statement of the law found in Am. & Eng. Encyc. Law, 596, which seems to be sustained by the authorities: "Where the act contains a single provision broader than the title, the court cannot narrow and change the ordinary meaning of the words employed in the act so as to sustain it as to cases falling within the title." See W. U. Tel. Co. *vs.* State, 62 Tex., 630; Cooley's Constitutional Limitations (6th ed.), 177, 211, 212; Elliott *vs.* State, 91 Ga., 694; 17 S. E., 1004; Trade-Mark Cases, 100 U. S., 82; 25 L. Ed., 550; Sutherland on Stat. Const., secs. 169, 170, 173, and decisions there cited.

In United States *vs.* Reese, 92 U. S., 214, 256; 23 L. Ed., 566, Waite, C. J., said: "We are therefore directly called upon to decide whether a penal statute enacted by Congress, with its limited powers, which is in general language broad enough to cover wrongful acts without as well as within the constitutional jurisdiction, can be limited by judicial construction so as to make it operate only on that which Congress may rightfully prohibit and punish. For this purpose we must take these sections of the statute as they are. We are not able to reject a part which is unconstitutional and retain the remainder because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by in-

serting those that are not there now. Each of the sections must stand as a whole or fall all together. The language is plain. There is no room for construction, unless it be as to the effect of the constitution. The question, then, to be determined is whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only. It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders and leave it to the courts to step inside and say who could be rightfully detained and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the Government. The courts enforce the legislative will when ascertained, if within the constitutional grant of power * * *. To limit this statute in the manner now asked would be to make a new law, not to enforce an old one. That is no part of our duty."

In Sutherland on Statutory Construction, sec. 172, the author announces that the rule stated above is applied with greater stringency in construing criminal statutes. If that distinction obtains in this State, notwithstanding article 9 of the Texas Penal Code of 1895, which provides that our criminal statutes shall be construed according to the same rule as civil statutes, yet it is true, nevertheless, as shown by authorities cited above, that the rule applies to civil as well as criminal statutes, and the reasoning advanced in United States *vs.* Reese, *supra,* supports the rule in any event.

In reply to appellant's contention that the act is in contravention of the constitutional provision quoted above, appellee insists that the language of the title, "and providing a reasonable amount of attorney's fees to be recovered in cases where the amount of such claims shall not exceed two hun-

dred dollars," is but a statement of details or incidents to the subject of legislation not necessary to have been included in the caption, and which should be treated as surplusage, in no way limiting the subject of legislation. With this contention we cannot agree. Prior to the passage of the act the law permitted a recovery upon such claims as those mentioned in the act, and the only purpose of the act was to allow a recovery of attorney's fees whenever a suit should become necessary to collect a claim of the character mentioned. The provision in the title reciting, in effect, that the act authorized a recovery of attorney's fees upon claims only "where the amount of such claims shall not exceed two hundred dollars" clearly is not merely a statement of details or incidents to the subject. The provision is as much a designation of the subject of legislation as are the other provisions which refer to the character or kind of claims embraced in the act. For the reasons given above, we hold that the act discussed is void in its entirety, and this conclusion renders it unnecessary to discuss appellant's further contention that the act is also in violation of section 1 of the Fourteenth Amendment to the Constitution of the United States.

From the foregoing it follows that the judgment in favor of appellee for twenty dollars as attorney's fees must be reversed and judgment must be here rendered in favor of appellant upon the claim for such fees, and it is so ordered; but the judgment in appellee's favor for $143.50 and for costs of suit in the trial court is affirmed.

IN THE SUPREME COURT OF TEXAS.

January 4, 1911.

COKE LOYD
vs.
FORT WORTH & D. C. RY. CO.

From Wise County, Second District.

This day came on to be heard the application of Coke Loyd for a writ of error to the Court of Civil Appeals for the Second District, and the same having been duly considered, it is ordered that said application be refused. That the applicant, Coke Loyd, pay all costs incurred on this application.

I, F. T. Connerly, clerk of the Supreme Court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by the Supreme Court on the application for writ of error in the above-styled cause.

Witness my hand and the seal of said court this the 19th day of October, A. D. 1911.

[Seal Supreme Court of the State of Texas.]

F. T. CONNERLY, *Clerk.*

[Endorsed:] Application No. 7053. Coke Loyd *vs.* Ft. W. & D. C. Ry. Co. Copy of judgment in Supreme Court. Application for writ of error refused.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 203.

THE GULF, COLORADO AND SANTA FE RY. CO., PLAINTIFF IN ERROR,

vs.

W. R. DENNIS.

IN ERROR TO THE COUNTY COURT OF MILAM COUNTY, STATE OF TEXAS.

MEMORANDUM ON JURISDICTION.

ALDIS B. BROWNE,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 203.

THE GULF, COLORADO AND SANTA FE RY. CO., PLAINTIFF IN ERROR,

vs.

W. R. DENNIS.

IN ERROR TO THE COUNTY COURT OF MILAM COUNTY, STATE OF TEXAS.

MEMORANDUM ON JURISDICTION.

Judgment in justice court against plaintiff in error for $75 and $20 attorney fee. Appeal to county court where trial occurred and judgment for like amount entered (R., 14).

Sayles, Texas Civil Statutes, vol. 1, p. 996, title 27, courts, chapter 13:

"*Jurisdiction of the Court of Civil Appeals.*"

"Article 996. *Jurisdiction defined.*

"The appellate jurisdiction of the courts of "civil appeals shall extend to civil cases within "the limit of their respective districts—

"1. Of which the district courts have original "appellate jurisdiction.

"2. Of which the county court has original jurisdiction.

"3. Of which the county court has appellate "jurisdiction when the judgment amount in con- "troversy or the judgment rendered shall exceed "one hundred dollars, exclusive of interest and "costs. The judgment of the courts of civil ap- "peals shall be conclusive in all cases on the facts "of the case, and a judgment of such courts shall "be conclusive on the law and fact, nor shall a "writ of error be allowed thereto from the Su- "preme Court in the following cases, to wit:

"1. Any civil cases appealed from a county "court or from a district court when under the "constitution a county court would have had orig- "inal or appellate jurisdiction to try it, except in "probate matters and in cases involving the

" revenue laws of the State or the validity of a " statute.

" 2. All cases of boundary.

" 3. All cases of slander and divorce.

" 4. All cases of contested elections of every " character other than for State officers, except " where the validity of the statute is attacked by " the decision.

" 5. The judgments of said courts of civil ap- " peals shall be final in all appeals from interlocu- " tory orders appointing receivers or trustees or " in such other interlocutory appeals as may be " allowed by law and the judgment of said court " shall be final in all other cases as to law and facts " except where appellate jurisdiction is given to " the Supreme Court and not made final in said " courts of civil appeals" (Acts 1892, p. 25).

Rev. Stats. Texas, 1895, article 996.

Note at foot of page 996:

" 1. The court of civil appeals has jurisdiction " of cases appealed from a county court only when " the judgment appealed from exceeds $100, exclu- " sive of interest and costs, though the case origi- " nated in a justice's court and was not tried *de* " *novo* in the county court" (G. C. & S. F. Ry. Co. *vs.* Rowley, 22 S. W., 182).

* * * * * * *

" 4. The court does not have jurisdiction unless " the amount in controversy or the amount of the " judgment appealed from exceeds $100, exclusive " of interest and costs.

" H. & T. C. Ry. Co. *vs.* Pressley, 2 App. " C. C., sec. 504.

" I. & G. N. R. R. Co. *vs.* Matthews, 1 App. " C. C., sec. 510.

" Mimam *vs.* Eidmon, 1 App. C. C., sec. 629.

" T. & P. Ry. Co. *vs.* Haney, 2 App. C. C., " sec. 709.

" 3 App. C. C., sec. 233.

" The cases cited are based on the provisions of " former statutes of similar character."

" *Chapter* 3, *p.* 940:

" *Jurisdiction of the Supreme Court.*"

" Article 940. APPELLATE JURISDICTION OF SUPREME COURT.

" The Supreme Court shall have appellate juris- " diction co-extensive with the limits of the State, " which shall extend to questions of law arising in " all civil cases of which the courts of civil appeals " have appellate but not final jurisdiction" (Acts 1892, p. 19).

Supplement to Sayles' Texas Civil Statutes (1903) p. 124.

Note to Art. 996.

* * * * * * *

" 8. The appellate court has no jurisdiction of " a case appealed from the county court if the mat- " ter in controversy, exclusive of interest and costs " does not exceed $100.

" Ray *vs.* S. A. & A. P. Ry. Co., 18 C. A., " 665; 45 S. W., 479."

The same note adds on this point

Green *vs.* Warren, 18 C. A., 548; 45 S. W., 608.

Merriet *vs.* Rogers, 46 S. W., 370.

Allen *vs.* Hall, 60 S. W., 586.

G. C. & S. F. Ry. Co. *vs.* Cunnigan, 95.

T. R. 439, 67 S. W., 890.

Supplement 1908, *Art.* 996, *p.* 80; *note*:

" 1. When judgment was obtained in justice " court for less than $100 and on appeal to the " county court judgment for same amount was " rendered and appeal taken to court of civil ap- " peals, the appeal was dismissed for want of juris- " diction."

" Laey *vs.* O'Reilly, 89 S. W., 641."

Supplement 1910, *Art.* 940, *p.* 115; *note*:

" The Supreme Court has jurisdiction in cases " appealed from county court to court of civil ap- " peals involving the validity of statute, because

" article 996 declares that the jurisdiction of the " court of civil appeals is not final."

" Texas & Pacific Ry. Co. *vs.* Webb (S. C.), 114 S. W., 1173."

Hence the writ of error to the County Court of Milam County ran to "the highest court of a State in which a decision in the suit could be had."

ALDIS B. BROWNE,
Of Counsel.